



# MARINE MAMMAL COMMISSION

26 May 2015

Ms. Jolie Harrison, Chief  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3226

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the City of San Diego's (the City) application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to reconstruction of the Children's Pool Lifeguard Station in La Jolla, California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 19 May 2015 notice (80 Fed. Reg. 28588) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission commented on similar applications in 2013 and 2014.

The City demolished the old lifeguard station in 2013 and has been constructing the new station since 2014. Because the construction activities were subject to delays (nesting of migratory birds, unexpected drainage pipe issues, and unexpected demolition and construction delays), the City has requested an additional one-year incidental harassment authorization to finish the construction activities. The new facility would include an observation tower, first aid room, male/female locker rooms, a second observation area, an access ramp for restrooms, a public viewing area, and a plaza. Use of equipment (i.e., backhoe, excavator, dump truck, crane, small drill rig, fork lift, air compressor, jack hammer, and hand/power tools) and increased presence of humans would be the main sources of marine mammal disturbance during the construction period. Activities would occur only during daylight hours.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- prohibiting construction activities during the harbor seal pupping and weaning season (15 December to 1 June);
- requiring the construction activities, to the maximum extent practicable, to occur from 8:30 am to 3:30 pm (a period when relatively few seals are hauled out) but allowing construction activities to occur from 7 am to 7 pm to ensure the activities are completed during this year;

- maintaining temporary visual and acoustic barriers between the construction activities and the haul-out site;
- using trained protected species observers to monitor 30 minutes before, during, and 30 minutes after construction activities;
- conducting in-situ measurements of in-air sound propagation and source levels<sup>1</sup> before and during demolition and construction activities and establishing buffer zones prior to the activities—monitoring harbor seal use 3–5 days prior to the activities and weekly for 60 days after the activities also would be required;
- after the first two months of monitoring, comparing the mean number of harbor seals observed in a 24-hour period during those two months to the mean lower 95 percent confidence interval and comparing the mean across three previous tidal cycles to the lower 95 percent confidence interval once a week thereafter—if any of the means are lower than the 95 percent confidence interval, activities would cease and the City would work with NMFS and harbor seal experts to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts<sup>2</sup>;
- reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS’s phased approach and suspending activities, if appropriate; and
- and submitting a final monitoring report.

The Commission concurs with NMFS’s preliminary finding and recommends that NMFS issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures. Please contact me if you have questions regarding the Commission’s recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.  
Executive Director

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<sup>1</sup> To better assess in-air sound propagation and source levels, the distance from the sound meter to each sound-producing activity when conducting sound measurements shall be noted.

<sup>2</sup> If abandonment of the site is likely, monitoring would be expanded away from the Children’s Pool to determine if animals have been temporarily displaced to known haul-out sites in the southern California area (e.g., north end of Torrey Pines, the cave on the exposed ocean side of Point Loma, etc.).